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BANK OF BRISTOL *v.* ASHWORTH.

Nov. 22, 1917.

[94 S. E. 469.]

1. Judgment (§ 16*)—Want of Jurisdiction—Reversal.—If the record shows that the trial court had no jurisdiction over the defendant, a judgment against defendant is plainly wrong and must be reversed.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 276.]

2. Courts (§ 12 (2)*)—Jurisdiction—Nonresidence.—That a defendant is a nonresident does not oust courts of general jurisdiction, if he is found and served with process within the territorial limits of such courts' jurisdiction.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 230.]

3. Courts (§ 12 (3)*)—Foreign Corporations—Jurisdiction—"Found."—A foreign corporation cannot be said to be "found" within a jurisdiction in which it does no business and has neither agent nor property, and domestic courts have no power to render judgment against it without a voluntary appearance.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Found.* 6 Va.-W. Va. Enc. Dig. 203; 12 Va.-W. Va. Enc. Dig. 226.]

4. Appeal and Error (§ 518 (6)*)—Record—Plea to Jurisdiction.—Where defendant in due time filed a plea to the jurisdiction, which was accepted and filed by the clerk at rules in the exercise of a ministerial and mandatory duty, it became a part of the record.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 507.]

5. Pleading (§ 355*)—Plea to Jurisdiction—Motion to Strike.—Where a defendant's plea to the jurisdiction had become a part of the record, the only method by which it could be expunged was by motion to strike out, and such motion could not be supplied by an order sustaining an objection and rejecting the plea, which amounted to no more than holding that the plea was not good.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 226.]

6. Pleading (§ 104 (2)*)—Plea to Jurisdiction—Dilatory Plea.—In an action of trover a plea to the jurisdiction of the court, on the ground that defendant was a foreign corporation doing no business in the state and having no office or place of business therein or any agent therein on whom process might be served, is not within the reason discouraging dilatory pleas, or a plea going merely to a question of venue within the state.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 12.]

7. Appeal and Error (§ 518 (6)*)—Judgment upon the Pleadings—Exception.—Where defendant filed a plea to the jurisdiction, and on objection the court made an order amounting to a holding that

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the plea was bad, it was a judgment on the pleadings, which required no exception to be stated in the order and no bill of exceptions to preserve the rights of defendant thereunder.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 507.]

8. Appeal and Error (§ 518 (6)*)—Record—Plea.—A plea never authoritatively in the record, or which being in is expressly stricken out, must be made the subject of a bill of exceptions or an express order of the court to make it a part of the record on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 507.]

9. Pleading (§ 104 (2)*)—Plea in Abatement—Better Writ.—The rule that a plea in abatement must show a more proper or sufficient jurisdiction in some other court of the state wherein the action is brought cannot avail, where a plea shows a condition of facts under which no court in the state has jurisdiction.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 4.]

10. Pleading (§ 104 (2)*)—Plea to the Jurisdiction—Sufficiency.—A plea to the jurisdiction commencing, "Defendant Bank of Bristol, Incorporated, for special plea * * * comes and says," complying with Code 1904, § 3269, and signed "Bank of Bristol, Incorporated, by A. B. Whiteaker, Attorney," was not bad in form because defendant corporation appeared in person instead of by attorney.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 12, 20.] Whittle, P., and Burks, J., dissenting.

Error to Circuit Court, Washington County.

Action of trover by J. S. Ashworth against the Bank of Bristol. Plea to the jurisdiction rejected and motion to dismiss the case overruled and verdict and judgment for plaintiff, and defendant brings error. Reversed, and order entered overruling objection to plea and remanding.

John J. Stuart, of Abingdon, and Pennington & Handy, of Bristol, for plaintiff in error.

Hutton & Hutton and White, Penn & Penn, all of Abingdon, for defendant in error.

FITZGERALD *v.* SOUTHERN FARM AGENCY.

Jan. 24, 1918.

[94 S. E. 761.]

1. Venue (§ 7*)—Broker's Commissions—Where Part of Cause of Action Arose.—Within Code 1904, § 3215, as to venue, part of the cause of action of a real estate agent for commissions arose where the primary contract of agency was made, notwithstanding a sup-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.